Filed 8/24/04 In re Corbin L. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

In re CORBIN L., a Person Coming Under the Juvenile Court Law.	
YUBA COUNTY DEPARTMENT OF CHILD PROTECTIVE SERVICES, Plaintiff and Respondent, v. JOSEPH B., Defendant and Appellant.	C045121 (Super. Ct. No. 030000045)

Joseph B. (appellant), the natural father of Corbin L. (the minor), appeals from juvenile court orders entered following a six-month review hearing continuing the minor as a dependent child, denying appellant status as the presumed father of the minor, and denying appellant reunification services. (Welf. & Inst. Code, §§ 366.21, subd. (e), 395; further undesignated section references are to the Welfare and Institutions Code.) Appellant makes several contentions of alleged prejudicial error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 31, 2003, Yuba County Human Services Agency (HSA) filed an original dependency petition pursuant to section 300 on behalf of the one-year-old minor. That petition alleged a history of substance abuse by Alicia L., the mother of the minor, and a history of domestic violence between Alicia and Daniel L., the presumed father of the minor. The petition listed appellant as the alleged father of the minor, living in Texas.

The minor's birth certificate lists Daniel L. as the father of the minor, and the minor was born during the marriage of Alicia and Daniel. However, according to Alicia, the minor's biological father was appellant. Thereafter, paternity testing revealed that Daniel was not the biological father of the minor. However, the juvenile court found Daniel was the presumed father of the minor.

HSA made efforts to locate appellant, and in February 2003 HSA notified appellant by mail of the jurisdiction hearing. Appellant did not attend that hearing. According to a March 2003 social worker's report, appellant told HSA he had learned in October 2000 from Alicia that she was pregnant but planned to have an abortion. Thereafter, in August 2001, Alicia told appellant that she had given birth to the minor, his child. Alicia also stated that she and Daniel were together and would raise the minor. The social worker reported appellant stated he "felt the right thing to do" was for the minor to be raised by Alicia and Daniel.

Appellant told HSA he had never seen the minor. He agreed to participate in paternity testing. Thereafter, an April 2003 report concluded appellant probably was the biological father of the minor. At the disposition hearing, the juvenile court appointed counsel for appellant and ruled appellant was the biological father of the minor. Appellant did not appear at that hearing.

A May 2003 report by the social worker stated that appellant left California and moved to Texas after the minor was conceived and had not returned to California. According to that report, appellant provided no financial support for Alicia either during her pregnancy or after the minor's birth. Appellant told the social worker he had sought legal advice about obtaining custody of the minor, "but was told he would have to pay for a paternity test, prove that [the minor's] parents were unfit, go to California, and still [might] not get custody . . . , but would have to pay child support." Appellant had not had any contact with the minor. HSA recommended no reunification services for appellant.

At a June 16, 2003 hearing, counsel for appellant acknowledged that Daniel L. was the presumed father of the minor. Moreover, counsel conceded that the biological father of a minor had no absolute right to reunification services. However, counsel argued that it was in the best interests of the minor for the juvenile court, in the exercise of its discretion, to grant appellant services.

At a June 25, 2003 hearing, appellant appeared, again requesting reunification services. Alicia L. testified she and Daniel L. were still married. However, she now believed it would be in the best interests of the minor to establish a relationship with appellant. Alicia admitted telling appellant falsely that she had an abortion. She knew that appellant opposed getting an abortion. Thereafter, Alicia advised appellant that she had given birth to the minor. Alicia also told the juvenile court that she had asked appellant then not to have a relationship with the minor. She was unaware that appellant had attempted to contact her.

Appellant testified he lived in Henrietta, Texas. According to appellant, Alicia told him three months after the minor's birth that he was the father of the minor. Appellant offered Alicia child support and a place for the minor and her in Texas. Thereafter, Alicia telephoned appellant periodically, and he attempted to maintain contact with her by contacting members of her family. At some point appellant lacked a telephone number with which to contact Alicia or the minor. Appellant told the juvenile court he had expressed an interest in establishing a relationship with the minor, but Alicia told him that he "had no right to him."

Appellant testified he went to a child protection services agency in Texas for assistance, but learned there was nothing he could do. Moreover, he attempted without success to obtain legal advice. Appellant also stated that, after first learning about the minor, he got a tattoo of the minor's name and birth

date across his chest. Appellant told the juvenile court he believed it was in the minor's best interests to establish a relationship with appellant.

Appellant admitted he had no current relationship with the minor. He claimed he was told not to pay any child support or to visit the minor; he had never seen the minor. Appellant had talked with the minor on the telephone once when the minor was an infant. According to appellant, Alicia had "led [him] to believe that [his] presence . . . would lead to her and Daniel end[ing] up in a fight . . . ." After the paternity test had been conducted, appellant testified, the social worker advised him that he had no rights. However, the social worker denied saying that.

On August 20, 2003, the juvenile court ruled appellant was not a presumed father of the minor, and did not grant appellant reunification services. The court ordered the minor to continue as a dependent child. This appeal followed.

DISCUSSION

I

Appellant contends Family Code section 7611 and section 361.5 violate his due process and equal protection rights insofar as they permit a third party to preclude a natural father from becoming a presumed father.

At a June 16, 2003 hearing, counsel for appellant stated: "I guess in a way we find 361.5 being somewhat unconstitutional the way it's written." Counsel did not explain how that statute

was unconstitutional, nor did he raise the matter again. Moreover, he did not assert any other constitutional infirmity.

Most, if not all, claims may be waived on appeal if not raised in the juvenile court. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.) "'An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the lower court by some appropriate method . . . .'" (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1; see *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885-886; *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) This includes constitutional issues not raised at trial, which ordinarily also are waived on appeal. (But see *Hale v. Morgan* (1978) 22 Cal.3d 388, 394.)

Appellant did not explicate any constitutional argument as to his status in the juvenile court, even though he had the opportunity to do so. Accordingly, he has waived the issue on appeal. Under these circumstances, we decline to review it here.

II

Appellant claims the juvenile court erred in denying him status as a presumed father entitled to reunification services. According to appellant, he openly held out the minor as his own child and invited the minor into his home. Appellant also claims Daniel L. failed to demonstrate an adequate commitment to his parental responsibilities to deserve presumed father status.

In the dependency system, "[a] 'natural father' can be, but is not necessarily, a 'presumed father' and a 'presumed father' can be, but is not necessarily, a 'natural father.'" (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.) A man who is found to be the biological father of a child is the "'natural father.'" However, only a man who has held the child out as his own and received the minor into his home is a "'presumed father.'" (*Ibid.*)

Presumed father status is the most advantageous to a father in the dependency system. Only a presumed father is entitled to reunification services under section 361.5, subdivision (a), and custody of the minor pursuant to section 361.2. (*In re Jerry P., supra,* 95 Cal.App.4th at p. 801.) Presumed fatherhood, for purposes of dependency actions, refers to a situation in which a father comes forward promptly and demonstrates a complete commitment to his parental responsibilities. (*Id.* at pp. 801-802.) It is the burden of the father to prove by a preponderance of the evidence that he is a presumed father. (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 585-586.)

In deciding whether a biological father has attained presumed father status, the juvenile court "should consider all factors relevant to that determination. The father's conduct both *before and after* the child's birth must be considered. Once the father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and his

circumstances permit." (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849.) "A court should also consider the father's public acknowledgement of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child. [Fn. omitted.]" (*Ibid*.)

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the appellate court "'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find'" in favor of the judgment. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L., supra,* at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) Moreover, the reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

In this case, the record contains some evidence to support a finding that appellant held the minor out as his own child. Appellant made efforts to maintain contact with Alicia L., contacted authorities to learn his rights, and submitted to

paternity testing. Moreover, he offered to pay child support and have the minor live with him in Texas.

But more than mere acknowledgement of the biological relationship and expressions of interest in a child are required to establish this element. Establishing paternity by legal action, assuming financial obligations of support, establishing and maintaining an emotional relationship and asserting legal rights to visitation and custody are but some of the indicia of assuming parental responsibilities which characterize the parent-child relationship necessary to raise a biological father to the status of presumed father. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1654; *In re Emily R.* (2000) 80 Cal.App.4th 1344, 1355.)

Appellant failed to bring the minor into his home, nor does the record reflect he demonstrated a full commitment to his parental responsibilities. (*Adoption of Kelsey S., supra,* 1 Cal.4th at p. 849; *Glen C. v. Superior Court, supra*, 78 Cal.App.4th at p. 585.) Asking the minor's mother to relocate and offering to pay for the support of the minor fall far short of manifesting the requisite commitment to a minor. (Cf. *Glen C. v. Superior Court, supra,* at p. 585.)

The Supreme Court extended the rule in *Kelsey S.*, a non-dependency adoption case, to a dependency proceeding where the biological father was precluded by a third party from attaining presumed father status and thus from qualifying for reunification services and custody. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 450-451.) Such a father may achieve presumed

father status if he displays the commitment of a *Kelsey S.* father. (*Ibid.*) However, the court in *Zacharia D.* observed that a dependency proceeding "requires a more time-critical response" or the biological father risks losing the opportunity to develop that biological connection "'into a full and enduring relationship'" with the child. (*Id.* at p. 452.) "[I]f a man fails to achieve presumed father status prior to the expiration of any reunification period in a dependency case . . . , he is not entitled to such services under section 361.5." (*Id.* at p. 453.)

The evidence presented at the hearing in this case does not show that appellant achieved presumed father status under *Kelsey S.* Resolving all conflicts in favor of the prevailing party, as we must, the evidence does not show appellant paid any pregnancy or birth expenses, attended the minor's birth, or took any steps to have his name put on the minor's birth certificate. In fact, he only came forward after the minor was placed in protective care. Accordingly, the court's ruling was supported by substantial evidence.

Appellant attempts to show that Alicia prevented him from establishing a parental role in the minor's life. However, the record at best is ambiguous in that regard, and the court, in ruling on the issue, impliedly disbelieved any suggestion by appellant that he was thwarted by Alicia. We are bound by that determination. (*In re Jason L., supra,* 222 Cal.App.3d at p. 1214; *In re Steve W., supra,* 217 Cal.App.3d at p. 16.) The juvenile court did not err in concluding appellant had failed to

establish he was entitled to presumed father status as to the minor.

III

Appellant's final claim is that the juvenile court abused its discretion in failing to find that reunification services for appellant would promote the best interests of the minor, pursuant to section 361.5. Noting the problematical history of Daniel L., appellant suggests the minor would benefit if appellant received services.

In denying appellant reunification services, presumably the juvenile court determined services would not be in the best interest of the minor.[1] Subdivision (a) of section 361.5 provides that the juvenile court may order reunification services to the natural father if the court determines such services will "benefit" the child. The difficulty in this case is that appellant has failed to explicate why or how granting services to appellant would benefit the minor. Appellant has never established a relationship with the minor, and in fact has never seen the minor. As the record suggests, except for one court appearance apparently appellant did not return to California after learning he was the father of the minor.

---

[1] The record contains no explicit denial of reunification services. However, appellant's argument presumes that the juvenile court failed to offer him services, a presumption that we agree is supported by the record and is tantamount to a denial of services.

On the record before the juvenile court, there was little if any evidence suggesting the likelihood of benefit to the minor by granting services to appellant. In his testimony, appellant offered no reason the minor would benefit. In fact, appellant agreed that, at least in the short term, it would be disruptive to the minor for appellant to attempt to establish a relationship with him. There was no error or abuse of discretion. (Cf. *In re Jessica F.* (1991) 229 Cal.App.3d 769, 779-793.)

DISPOSITION

The orders are affirmed.

BLEASE, Acting P.J.

We concur:

DAVIS, J.

RAYE, J.